IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO. 2292 OF 2007

IN

WRIT PETITION NO. 2564 OF 2005

Shibai & Shivabai
Okana Mothi & Ors. .. Applicants.

vs.

The State of Maharashtra
& Ors. .. Respondents.

Mr. S.P. Kanuga i/by J.S. Chandnani for Applicants.
Mr. P.C. Kansara for Petitioner.
Mr. V.D. Patil for R. No. 7.

CORAM: J.N. PATEL &
A.A. SAYED, JJ.
DATE: 16TH OCTOBER, 2007.

P.C.

. The respondent nos. 3 and 6 have moved this Court for recalling our order dated 23.3.2007 by which this Court disposed of the petition by directing the officials of the Municipal Corporation of Ulhasnagar to demolish the unauthorised structure which is claimed by

the applicant no. 6.

2. It is the contention of the applicants that they were not served and the orders came to be passed behind their back depriving them of the opportunity of being heard.

3. On the other hand, it is contended by the learned counsel for the petitioner that the applicant - respondent nos. 3 and 6 - have no locus standi in the matter as their construction is wholly unauthorised and as they have no right, title and interest in the land in question, they are rank trespassers and have encroached upon the land.

4. The contention of the respondent non-applicant is supported by the Municipal Corporation of Ulhasnagar and it is their case that in past the unauthorised construction was demolished repeatedly.

5. The case of the applicants - original respondents - is that they cannot be condemned without being heard. In our view, the Court will have to give them a fair opportunity of putting their case before this Court. Therefore, we allow the application in terms of prayer clause (a) on the condition that the respondent nos. 3 and 6 are waiving serving in the matter and would not carry out any addition and/or alteration to the existing structure.

6. The petition be listed for hearing at the stage of admission on 29.10.2007. By that time the respondent nos. 3 and 6 should file their affidavit in reply and the Municipal Corporation is directed to make available orders, court record and proceedings relating to the disputed land and structure so that the petition can be disposed of at the stage of admission itself.

7. We are informed by the parties that the civil suit in the matter is also pending which is concluded and due for judgment. We make it clear that the pendency of this petition is no legal impediment to the trial Court to proceed with the suit and the trial court may decide the same on its own merits without being influenced by the fact that the petition is pending in this Court.

(J.N. Patel, J.)

(A.A. Sayed, J.)